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AESO/SE
02-21-00-F-0303R1

March 26, 2004

Ms. Cindy Lester
U.S. Army Corps of Engineers
Arizona-Nevada Area Office
3636 North Central Avenue, Suite 900
Phoenix, Arizona 85012-1939

Reference File: 2000-01878-MB

Dear Ms. Lester:

Thank you for your March 1, 2004 letter requesting reinitiation of formal consultation under section 7 of the Endangered Species Act for the Skyranch residential development. Skyranch is a 512-acre residential development located near the southwestern corner of Tangerine Road and Thornydale Road in the Town of Marana, Pima County, Arizona (T12S, R13E, Section 6). The original consultation concerned the possible effects of your proposed authorization, under section 404 of the Clean Water Act, to discharge fill material into 0.2 acre of waters of the U.S. in the unnamed washes associated with the Skyranch project on the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl), an endangered species, and its proposed critical habitat. We completed formal section 7 consultation for this project with the issuance of a biological opinion dated January 28, 2004.

On February 17, 2004, we received information from Westland Resources, consultants for the Skyranch project proponents, regarding a proposed project change. The proposed change is related to the location of the water transmission main for the project. The water transmission main must be relocated due to Arizona Department of Transportation regulations precluding the location of longitudinal facilities within State Route rights-of-way. The reinitiation notice in our January 28, 2004 biological opinion indicates that reinitiation is appropriate if new information reveals actions that may adversely affect the pygmy-owl or its proposed critical habitat in a manner or extent that was not considered in the biological opinion. We agree that the proposed change in location of the water transmission main should be considered new information sufficient to trigger reinitiation of formal section 7 consultation.

Enclosed is a biological and conference opinion addressing the effects of the proposed project change on the pygmy-owl and its proposed critical habitat in relation to our previous analysis and the Skyranch Habitat Conservation Plan, the previous Biological Assessment and Biological

Evaluation, and the revised Biological Evaluation provided with your request for reinitiation. It includes measures that we believe are necessary to reduce the likelihood of take of the pygmy-owl stemming from the proposed project change. We conclude that the proposed change in location of the water transmission main is not likely to jeopardize the continued existence of the pygmy-owl, nor is it likely to cause the destruction or adverse modification of proposed pygmy-owl critical habitat.

This concludes the reinitiation of formal section 7 consultation with you on the proposed Sky Ranch Residential Development Project in the Town of Marana, Pima County, Arizona. We appreciate your efforts in considering endangered species as part of your program activities. If you have any questions or if we can be of additional assistance, please contact Scott Richardson (520) 670-6150 (x 242) or Sherry Barrett (520) 670-6144 (x 223).

Sincerely,

/s/ Steven L. Spangle
Field Supervisor

Enclosure

cc: Army Corps of Engineers, Tucson, AZ (Attn: Marjorie Blaine)(w/enclosure)
Exeter LXI, LLC, Tucson, AZ (Attn: Steve Quarles)(w/o enclosure)
Westland Resources, Tucson, AZ (Attn: Mike Cross) (w/enclosure)
Habitat Branch, Arizona Game and Fish Dept., Phoenix, AZ (Attn. Bob Broscheid)
(w/o enclosure)
Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ
(w/o enclosure)

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March 26, 2004

Ms. Cindy Lester P.E.
Regulatory Branch
U.S. Army Corps of Engineers
Arizona-Nevada Area Office
3636 North Central Avenue, Suite 900
Phoenix, Arizona 85012-1939

File Number: 2000-01878-MB

Dear Ms. Lester:

This responds to your March 1, 2004 request for reinitiation of formal consultation and conference consultation on the effects of the Skyranch residential development project in the Town of Marana, Pima County, Arizona (T12S, R13E, Sec. 6) on the endangered cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) and its proposed critical habitat. This response transmits our biological and conference opinion in accordance with the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

This biological and conference opinion (collectively supplemental BO) addresses the potential effects of the proposed action on the pygmy-owl and its proposed critical habitat and is based on all of the information referenced in our January 28, 2004 Biological and Conference Opinion (original BO). Additionally, we relied on information provided in a February 17, 2004 Technical Memorandum and the February 27, 2004 revised Biological Evaluation, both from Westland Resources, consultants for the Skyranch project. A complete administrative record of this consultation is on file at this office. We have assigned log number 02-21-00-F-303R1 to this project. Please refer to that number in future correspondence on this consultation.

BIOLOGICAL OPINION

On January 28, 2004 we issued the original BO evaluating the potential impacts of the Skyranch Project on the pygmy-owl and its proposed critical habitat. On February 17, 2004 we received information from Westland Resources, consultants for the Skyranch project proponents, regarding a proposed project change. The proposed change is related to the location of the water

transmission main for the project. The water transmission main must be relocated due to Arizona Department of Transportation regulations precluding the location of longitudinal facilities within State Route rights-of-way. The reinitiation notice in the original BO indicates that reinitiation is appropriate if new information reveals actions that may adversely affect the pygmy-owl or its proposed critical habitat in a manner or extent that was not considered in the biological opinion. This supplemental BO responds to your request for reinitiation of section 7 consultation resulting from the proposed change in the location of the water transmission main.

Consultation History

- 12/5/2002 – Revised Habitat Conservation Plan (HCP) application submitted by Thomas Olsen Associates (TOA) on behalf of Exeter LXI LLC (Applicant).
- 12/16/2002 – Notice of availability and request for public comment published in the Federal Register with 60-day comment period.
- 2/16/2003 – Public comment period closed; five comments received.
- 11/16/2003 – Final draft HCP and Implementing Agreement received from the Applicant and TOA
- 1/8/2004 - Request for consultation and biological evaluation received from the Army Corps of Engineers
- 1/28/2004 - Final biological and conference opinion issued, concluding intra-Service consultation on the issuance of a permit authorizing incidental take under section 10(a)(1)(B) of the Act and formal section 7 consultation with the Army Corps of Engineers for authorization of activities under section 404 of the Clean Water Act.
- 2/17/2004 - Technical Memorandum received from Westland Resources, Applicant's consultant, regarding the need to change the location of the water transmission main.
- 3/1/2004 - Request for reinitiation of formal section 7 consultation based on the proposed change in the location of the water main. The request included a revised Biological Evaluation prepared by Westland Resources.

DESCRIPTION OF PROPOSED ACTION

Skyranch will be a single-family, residential subdivision that will be located on 512 acres of land south of Tangerine and west of Thornydale roads. The Project will consist of not more than 440 production lots on approximately 103 acres of developed land and will include associated natural open space. Detailed discussions of on-site development plans and conservation measures can be found in the original BO. The majority of on-site impacts to the pygmy-owl have been discussed in detail in the original BO and will not be repeated herein. Due to an Arizona Department of Transportation (ADOT) policy regarding placement of utilities in state route rights-of-ways, the water line alignment previously proposed along Tangerine Road must be re-located. The new

alignment enters the Property from Thornydale Road and runs west through the Project to the Stitler Ranch Place cul-de-sac associated with the development lots located centrally within the Project.

As discussed in the original BO, development of Skyranch will require the installation of on- and off-site utilities and minor roadway improvements for safe ingress and egress to the Property. The off-site utilities will include new water, electricity, natural gas, and sewer services. However, some utilities that were described as off-site in the original BO now represent on-site impacts because of the need to move the alignment of the water main. Project-specific disturbance from dry utility installation will likely be within the anticipated disturbance limits for wet utilities, minimizing impacts to existing native vegetation. The acreage of disturbance for the off-site utilities was determined during meetings with the Project's contractor, Borderland Construction.

The previously proposed water line alignment along Tangerine Road from its intersection with Camino de Mañana to Thornydale Road (approximately 3,000 linear feet extending up to 20 feet from the edge of existing pavement, on the south side) has been retracted due to ADOT policy. This alignment had a total disturbance area of 1.308 acres resulting in temporary impacts to 0.135 acre of vegetation.

New on-site utility service proposed for the Project will be installed within the following area:

- Perpendicular to Thornydale Road onto the Property along an existing, disturbed area and then across undisturbed land to the middle cul-de-sac as described above (approximately 1,650 linear feet with a 20-foot width). This new alignment will have a total disturbance area of 0.799 acre with temporary impacts to 0.596 acre of vegetation.

New off-site utility service proposed for the Project will be installed within the following areas:

- Along Thornydale Road south from the intersection of Tangerine and Thornydale to the southeastern development pod (approximately 2,700 linear feet extending up to 12 feet from the edge of existing pavement, on the east side),
- Along Camino del Norte from the intersection with Camino de Oeste east approximately 0.75 mile (approximately 3,330 linear feet extending across the existing 30-foot-wide dirt road right-of-way and 10 additional feet on the north side),
- Along Camino de Oeste from the intersection with Camino del Norte north approximately 0.075 mile (approximately 800 linear feet extending across the existing 30-foot-wide dirt road right-of-way), and
- Along Camino de Mañana from the property entrance northeast to the intersection with Tangerine Road (approximately 1,400 linear feet extending up to 12 feet from the edge of the existing pavement, on the south side).

Off-site road improvements will be made at:

- The Property access point on Thornydale Road, consisting of one each acceleration and deceleration lane on the west side of Thornydale Road;
- At the intersection of Camino de Mañana and Tangerine roads, consisting of one deceleration lane on the south side of Tangerine Road; and
- Pavement overlay on Camino de Mañana.

The acceleration and deceleration lanes vary in length and width as they transition from the travel lanes to independent turn lanes. Land disturbance areas associated with the three turn lanes are up to approximately 900 feet long (at the Tangerine Road acceleration lane) and generally extend up to 23 feet from the edge of existing pavement (to accommodate line-of-sight viewing requirements along the deceleration lane at Thornydale Road). No new land disturbance will result from the pavement overlay on Camino de Mañana.

Westland Resources indicates, in their February 17, 2004 Technical Memorandum, that the new water main easement will be restored and revegetated upon completion. The revised BE also indicates that all conservation measures included in the original BO will be applied to the new, on-site impacts of the new water main alignment. All conservation measures described in the original BO are incorporated herein by reference.

STATUS OF THE SPECIES AND ENVIRONMENTAL BASELINE

As indicated in your March 1, 2004 request for reinitiation, your effects determination has not changed in consideration of the new water main alignment. Therefore, the pygmy-owl is the sole species under analysis in this supplemental BO. The status of the pygmy-owl, the action area for the Skyranch project, and the Environmental Baseline are unchanged from the original BO, and that information is incorporated herein by reference.

EFFECTS OF THE PROPOSED ACTION

The original BO described the direct and indirect effects of the Skyranch project on the pygmy-owl, and those analyses are incorporated herein by reference. The proposed change in the location of the water main will result in new on-site impacts to undisturbed natural open space. These effects were originally off-site in nature and occurred primarily in an existing, disturbed right-of-way. The new water main alignment will occur in undisturbed open space, potentially increasing the impacts to pygmy-owl habitat elements. When compared to the previous alignment, vegetation impacts resulting from the new alignment will increase by 0.434 acre. The total disturbance area resulting from utilities and roadway improvements analyzed under the original BO was 6.035 acres, with 1.12 acres of vegetation disturbance. With the new water main alignment, total disturbed area will be 6.047 acres with 1.581 acres of vegetation disturbance. Under both scenarios, the impacts to vegetation will be temporary and are linear in nature and, with the exception of a portion of the newly proposed onsite water line alignment, will occur along previously disturbed, existing roadways. The anticipated take from the on-site

and off-site activities, including the new water main alignment, will be as described in the original BO for on-site activities, because the newly re-located water line does not add materially to the incidental take described therein. The conservation measures committed to in the original BO will be applied to the new disturbance area as appropriate, and are incorporated herein by reference.

As described in the original BO, the incidental take anticipated is limited to harm or harassment that may occur during on-site and off-site construction and operation of the Project. The anticipated incidental take for the Project is limited to:

- Two non-breeding pygmy-owls the first year of construction;
- One non-breeding pygmy-owl the second year of construction; and
- One non-breeding pygmy-owl the last two years of construction and for the remainder of the permit.

This take is not cumulative but, instead, is what is likely to occur in the specific year or years identified above. Thus, for example, if two dispersing owls are not detected on the Property the first year, the Applicant will not be covered for any additional take other than what is stated above for subsequent years.

CRITICAL HABITAT

The Skyranch project occurs within Critical Habitat Unit 3 of proposed critical habitat for the pygmy-owl. All of the primary constituent elements defined in the proposed rule designating critical habitat are found within the Skyranch boundaries. Constituent elements containing components essential for nesting, rearing of young, roosting, sheltering, and dispersal will be removed in a portion of this area, including the new water main alignment. These elements include Sonoran desertscrub and xeroriparian vegetation containing saguaro cactus and large diameter trees, including ironwood, paloverde, mesquite, etc. The new water main alignment will result in the loss of 0.434 acre of proposed critical habitat beyond the impacts analyzed in the original BO. After applying the conservation measures included in the original BO, we do not believe that the additional effects to critical habitat resulting from the change in location of the water main rise to the level of destruction or adverse modification. Vegetation impacts will be mitigated by restoring and revegetating disturbance within the new alignment. The conservation measures described above and in the original BO should maintain the function and viability of proposed CHU 3. In addition, these measures also are in conformance with the recovery objectives outlined in the draft pygmy-owl recovery plan, and would not, therefore, appreciably reduce the likelihood of recovery of the pygmy-owl.

CUMULATIVE EFFECTS

The effects of the new water main alignment will occur on-site and will be temporary in nature. This change in the scope of the project does not alter the cumulative effects analysis for this

project. Therefore, the cumulative effects analysis contained in the original BO is applicable to this reinitiation and is incorporated herein by reference.

CONCLUSION

Changing the location of the water transmission main from the disturbed Tangerine Road right-of-way to undisturbed natural open space constitutes new information revealing potential adverse effects to the pygmy-owl not considered in our original BO. Reinitiating formal section 7 consultation has allowed us to analyze these potential effects in the context of the original BO and the Applicant's HCP. This analysis leads us to conclude that changing the location of the water transmission main is not likely to jeopardize the continued existence of the pygmy-owl, and it is our conference opinion that the effects of this project do not rise to the level of destruction or adverse modification of proposed critical habitat.

In making this determination, we considered the following:

- The status of the pygmy-owl in Arizona is tenuous. The number of adult pygmy-owls documented in Arizona has never exceeded 50 since regular survey and monitoring work began in 1993. In both 2002 and 2003, the number of known pygmy-owl nests in the State was three and four respectively, down from the highest number, 13, documented in 2001. Although sample size is low and the monitoring period short, available data suggest that there may be a declining trend in population that has somewhat corresponded with recent drought conditions. However, in and around the action area, drought should not have such a marked effect due to artificial water sources, enhanced vegetation, and increased prey availability. However, numbers of known pygmy-owls within CHU 3 have declined from a high of 11 in 2000 to only 3 in 2003. Observations by researchers in Mexico may indicate a similar population decline just south of the U.S. Mexico border (A. Flesch, pers. comm).
- The CHU 3, including the action area, has been subject to rapid growth and urbanization. Existing natural habitats have been lost and fragmented. Growth in the Town of Marana, the primary jurisdiction within the action area, exceeded 400% during the past decade. Oro Valley, also within CHU 3, had 310% growth during that same time period. While some recent development projects have utilized lower housing densities or clustered development, many of the residential subdivisions being developed are high density (4 to 6 houses/acre). Many of the roads in the action area are slated for expansion or improvement, and at least one new highway interchange is under development. Some sites within CHU 3 have been designated for pygmy-owl conservation as a result of completed section 7 consultations.
- With the recent EPA transfer of the section 402 CWA NPDES program to the State of Arizona, the number of projects with a Federal nexus has been reduced within CHU 3. Single-family residence construction typically does not have a Federal nexus. Cumulative effects considered in our analysis include residential subdivisions, single-family residences, and commercial projects where zoning, development plans, subdivision plats, or impact fee assessment make them reasonably certain to occur, but no Federal nexus is anticipated. Areas where these cumulative effects are anticipated to occur include areas where pygmy-

owl breeding home ranges and dispersal pathways have been documented. Cumulative effects are likely to continue to further fragment habitat.

- The Applicant has included a number of conservation measures that will meaningfully reduce the effects of the proposed action on pygmy-owls by 1) minimizing noise and vegetation disturbance if a pygmy-owl is detected on the project site prior to and/or after commencement of construction, reducing the extent of direct effects; 2) minimizing the indirect effects of this development (e.g., pet predation, pesticides, lighting, inappropriate activities within the conserved open space) on pygmy-owls; 3) limiting vegetation impacts to 20% to 22% of the Property ; 4) conserving 78% to 80% of the Property as natural open space; 5) maintaining habitat connectivity by leaving the washes in a natural state; and 6) revegetating and restoring the disturbed area along the new water transmission main alignment.

In summary, our conclusions are based on the record of this consultation as described in the original BO, and the revised Biological Evaluation addressing the changed water main alignment, and the information outlined in this supplemental BO. The pertinent points are summarize below:

1. The Property contains or is overlapped by four known pygmy-owl home ranges. However, no pygmy-owls are known to currently occupy any of these home ranges; therefore, the likelihood of lethal take is minimal. Effects to these home ranges have been minimized and mitigated through establishment of 78% to 80% of the Property as a habitat reserve that should allow for continued pygmy-owl breeding and dispersal.
2. Conservation measures will be implemented to mitigate to the maximum extent practicable direct and indirect effects to the pygmy-owl in the face of declining pygmy-owl population status, baseline conditions characterized by reduced and fragmented habitat availability, and substantial cumulative effects. These measures include contingencies to avoid noise and habitat disturbance of any pygmy-owl that may establish a home range on or adjacent to the proposed project site and the revegetation and restoration of the new water main alignment.
3. The additional disturbed acreage associated with the proposed change in location of the water main is minimal and overall habitat disturbance will still not exceed 20% of the 512-acre Property [22% in the case of circumstances outlined in 7.2.1.1 of the HCP]; and the disturbance will be temporary or will occur in a configuration that will still allow the potential for nesting and movement, therefore effects do not rise to the level of adverse modification of proposed critical habitat.
4. The effects of losing 104.12 acres of suitable habitat and the associated constituent elements will be partially minimized through the protection of approximately 409 acres within the Property (80% of the Property). These protected lands will remain undisturbed and be managed in a manner that will protect suitable habitat for the pygmy owl and contribute to its conservation. Take proposed is of four, non-breeding pygmy-owls and is

non-lethal harm or harassment (2/year for the first year, 1 in the 2nd year, and 1 in the 3rd and 4th year).

5. Conserved open space will maintain connectivity within the Property and to adjacent suitable habitat areas offsite.
6. Conserved open space will provide habitat suitable for breeding, sheltering, feeding, and movement, partially offsetting adjacent and regional cumulative effects.
7. Annual reports will be submitted to us outlining the progress and extent of the implementation of pygmy-owl conservation measures and other actions outlined within the HCP and this opinion.

INCIDENTAL TAKE STATEMENT

The project modifications will not affect the amount of anticipated incidental take of the pygmy-owl beyond that considered in the original BO. Therefore, the incidental take statement from the original BO is incorporated herein by reference.

REASONABLE AND PRUDENT MEASURES

The mitigation, minimization, survey, monitoring, and reporting measures provided in the original BO, HCP, Implementing Agreement, and Terms and Conditions of the Incidental Take Permit are incorporated herein by reference as reasonable and prudent measures and terms and conditions. The following statement from the Westland Resources' February 17, 2004 Technical Memorandum is added as an additional Term and Condition implementing the Reasonable and Prudent Measures:

- The easement will be restored and revegetated upon completion.

We find that these Reasonable and Prudent Measures adequately minimize the potential incidental taking of the pygmy-owl resulting from the development of the Skyranch Project.

CONSERVATION RECOMMENDATIONS

Sections 2(c) and 7(a)(1) of the Act direct Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of listed species. Conservation recommendations are discretionary agency activities to minimize or avoid effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information on listed species. The recommendations provided here do not necessarily represent complete fulfillment of the agency's section 2(c) or 7(a)(1) responsibilities for the pygmy-owl. In furtherance of the purposes of the Act, we recommend implementing the following discretionary actions:

- Conduct or fund studies using both monitoring and telemetry to determine pygmy-owl habitat use patterns and relationships between owls and the human interface in northwest Tucson. Surveys involving simulated or recorded calls of pygmy-owls require an appropriate permit from the FWS. AGFD should also be contacted in regard to state permitting requirements.
- Continue to actively participate in regional planning efforts, such as Pima County's Sonoran Desert Conservation Plan (SDCP) and the Town of Marana's HCP, and other conservation efforts for the pygmy-owl.
- Assist in the implementation of recovery tasks identified in the pygmy-owl Recovery Plan when approved by the FWS.
- Monitor the effectiveness of conservation measures associated with issuance of authorized permits.

REINITIATION-CLOSING STATEMENT

This concludes the reinitiation of formal consultation with the ACOE on the proposed Sky ranch Project in the Town of Marana, Pima County, Arizona. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

We have assigned log number 02-21-00-F-0303R1 to this consultation. Please refer to that number in future correspondence regarding this consultation. Any questions or comments should be directed to Scott Richardson at (520) 670-6150 (x 242) or Sherry Barrett at (520) 670-6150 (x 223).

Sincerely,

/s/ Steven L. Spangle
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ
Regional Supervisor, Arizona Game and Fish Department, Tucson, AZ
Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ (Attn: Bob Broscheid)
Army Corps of Engineers, Tucson, AZ (Attn: Marjorie Blaine)

Exeter LXI, LLC, Tucson, AZ (Attn: Steve Quarles)
Westland Resources, Tucson, AZ (Attn: Mike Cross)

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